mill additional on each dollar of the whole volume, gross, of business transacted annually." The plaintiff sold and delivered at wholesale from a warehouse located in the state, merchandise to purchasers within the state and to customers in foreign countries. The bulk of the sales was to purchasers without the state. In an action to determine the validity of the tax, it was *held* that the tax was unconstitutional. *Crew Levick Co.* v. *Commonwealth of Pennsylvania* (1917) 245 U. S. 292, 38 Sup. Ct. 126.

Merchants and others doing a local business are subject to an occupation tax of a specific and reasonable amount, even though a considerable part of the business done is interstate commerce. *Kehrer* v. *Stewart* (1905) 197 U. S. 60, 25 Sup. Ct. 403; *Postal Telegraph Co.* v. *City of Portland* (D. C. 1915) 228 Fed 254. The Supreme Court has, however, gone further in *Ficklen* v. *Shelby County Taxing District* (1892) 145 U. S. 1, 12 Sup. Ct. 810 which permitted a state to require as a condition for a license to do general brokerage business, the payment of a fee measured by the receipts from interstate as well as from local business. Where, however, a tax, whether it be called an occupation tax or not, is measured by gross receipts from all business, an element similar to the one which has perplexed the court in determining the validity of taxation of foreign corporations for the privilege of doing local business, would seem to be involved. *Cf. Western Union Tel. Co.* v. *Kansas* (1910) 216 U. S. 1, 30 Sup. Ct. 190; see 18 Columbia Law Rev. 168. If the business taxed includes interstate commerce, a tax on the gross receipts thereof would seem to affect directly the flow of goods to and from other states, since it is obvious that the greater the exporting of goods, the greater would the tax become. It is difficult, however, to distinguish the instant case from the *Ficklen* case. The distinction drawn by the court in the principal case to the effect that the tax was not an occupation tax except as it was levied on the very carrying on of the business of exporting merchandise, is not very potent, since the "exception" is equally applicable to the *Ficklen* case, which therefore seems to be practically and rightly overruled. See *Galveston, etc., Ry.* v. *Texas* (1908) 210 U. S. 217, 28 Sup. Ct. 638; 31 Harvard Law Rev. 721, 762 *n.* 156. Though the Supreme Court has permitted taxes on property to be measured by receipts which are in part from interstate commerce, *Adams Express Co.* v. *Ohio* (1897) 165 U. S. 194, 17 Sup. Ct. 604, it has declared invalid a tax on railroads "equal to" a percentage of the gross receipts. *Galveston, etc., Ry.* v. *Texas, supra.* The tendency, therefore, would seem to be to permit states to take account of interstate business once only in the levying of their taxes, and to uphold such taxes when they are laid upon the property, tangible or intangible, within a state, since such taxes appear, at least in so far as their nomenclature is concerned, to affect interstate commerce the least. *Cudahy Packing Co.* v. *Minnesota* (U. S. Sup. Ct. Oct. Term 1917, No. 32).

CORPORATIONS—CONTESTED ELECTION OF DIRECTORS—REMEDY.—Plaintiffs filed a bill in equity to try the validity of the corporate election of directors, claiming that the election of the defendants, who were acting as directors, was invalid. A statute provided that *quo warranto* could be brought against any person wrongfully exercising a franchise. *Held,* three judges dissenting, that the plaintiffs had an adequate remedy at law by *quo warranto* under the statute, and therefore no relief in equity would be granted. *Grant* v. *Elder* (Colo. 1917) 170 Pac. 198.

Quo warranto, either in the earlier form of a writ or in the later form of an information, lay at common law to test the validity of the exercise of a franchise. High, Extraordinary Legal Remedies, (3rd ed.) §§ 592 *et seq.* Its application to test the validity of an election to office in a private corporation has been denied, *Queen* v. *Mousley* (1846) 8 Q. B. 946, even under a statute similar to the one in the instant case, on the ground that such an office is not a public office. See *Gilchrist* v. *Collopy* (1904) 119 Ky. 110, 82 S. W. 1018. In most jurisdictions, however, it has been held to be a proper remedy in such sases, *State ex rel. Dunlap* v. *Stewart* (1881) 11 Del. 359; *Commonwealth* v. *Graham* (1870) 64 Pa. 339; *Armstrong* v. *State ex rel. Edwards* (1884) 95 Ind. 421, and it would seem that a statute such as the one in the instant case should apply, *Owen* v. *Whitaker* (1869) 20 N. J. Eq. 122, since, by exercising the powers given the corporation by franchise, the directors illegally elected were wrongfully exercising a franchise. Where *quo warranto* may be brought, relief in equity has been denied, *Deal* v. *Miller* (1914) 245 Pa. 1, 90 Atl. 1070, on the ground that there existed an adequate remedy at law. *McCarthy* v. *McKinney* (1911) 137 Ga. 292, 73 S. E. 394; *Owen* v. *Whitaker, supra.* Equity, however, may enjoin the holding of a corporate election, *Way* v. *American Grease Co.* (1900) 60 N. J. Eq. 263, 47 Atl. 44; 2 Cook, Corporations (6th ed.) §§ 616, 618, and, when equity has jurisdiction on other grounds, it may decide the validity of an election already held. *Chicago Macaroni Co.* v. *Boggiano* (1903) 202 Ill. 312, 67 N. E. 17. The cumbersome nature of the proceeding in *quo warranto,* which has led to the enactment of statutes conferring upon the courts equity jurisdiction in the matter of corporate elections, see *Matter of Ringler and Co.* (1912) 204 N. Y. 30, 40, 97 N. E. 593; 2 Cook, *op. cit.* § 619, might afford a ground on which equity could take jurisdiction in cases such as the instant one.

COURTS—NUNC PRO TUNC CORRECTIONS—CRIMINAL CASES.—The petitioner, convicted of murder, sought discharge from custody by a writ of habeas corpus, relying on a statute relating to unwarranted delay in the conduct of criminal prosecutions. After the term at which judgment had been rendered granting the writ of habeas corpus, the court amended the record by a *nunc pro tunc* order, inserting a memorandum of proceedings inadvertently omitted by the clerk, which made the statute inapplicable. *Held,* that the court had power so to amend the record, after giving the prisoner notice and an opportunity to be heard, and that the writ should be denied. *Ex parte Coon* (W. Va. 1918) 94 S. E. 957.

In civil cases, a court may upon proper evidence amend the record at any time by *nunc pro tunc* orders, so as to make it disclose what had actually been done. *Clifford* v. *City of Martinsburg* (1916) 78 W. Va. 287, 88 S. E. 845; *Chester* v. *Graves* (1914) 159 Ky. 244, 166 S. W. 998. The extent to which the power may be exercised in criminal cases is not so well established. Since the immediate execution of criminal sentences is deemed expedient, it has been held that the record of judgments may not be amended to insert an additional penalty after the sentence as recorded has been fully served. *Smith* v. *District Court of Mahaska County* (1906) 132 Iowa 603, 109 N. W. 1085. The power of the court to amend the record has apparently not been otherwise restricted. Thus, mere